BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 91-141-G - ORDER NO. 92-30

JANUARY 22, 1992

IN RE: Piedmont Natural Gas Company - Application for an adjustment of its Rates and Charges.	)))	ORDER ON RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Reconsideration filed by Piedmont Natural Gas Company (Piedmont or the Company) and on a Petition for Rehearing and Reconsideration filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Both were filed with the Commission on December 23, 1991. The Orders seek reconsideration of our Order No. 91-1003 issued November 27, 1991. The Commission denies portions of both Petitions and grants portions of both Petitions.

First, with regard to the Petition for Reconsideration filed by Piedmont, Piedmont states that the Commission erred in excluding $3,000,000 of the Company's deferred account from rate base. Piedmont alleges that the record is devoid of any numbers upon which this $3,000,000 figure can be derived and that, further, the Company did not at July 31, 1991, and did not at the time of the Petition have $3,000,000 in its Deferred Account No. 253.04. (See Piedmont Petition at 1.) Our Order No. 91-1003 at 35 held that a limit of $3,000,000 in this account was set by Commission Order No.

90-673, dated July 10, 1990, in Docket No. 89-11-G. The Commission's intent in its Order No. 91-1003 was to exclude amounts up to and including this $3,000,000 figure, the $3,000,000 figure being that derived from Order No. 90-673, of which the Commission took judicial notice. Therefore, the Commission denies reconsideration of its holding on the removal of the $3,000,000 of the Company's deferred account from rate base.

Piedmont further states in its Petition for Reconsideration that the Commission erred in eliminating increases in officers' salaries for the test year. Piedmont states that Commission precedent was insufficient to support the Commission's holding. (See Piedmont Petition at 2.) The Commission's Order was based on the manner in which the Commission had treated utilities similarly situated in the past and, therefore, was sufficient to support the elimination of $23,391, which represented the increase in officers' salaries for the test year. Piedmont's assertions must be rejected in this regard.

Third, Piedmont argues that the Commission erred in rejecting the use of the retention factor for the Company. Piedmont went on to state that in the Company's last general rate case, the Commission found that the Company would not be given an opportunity to earn revenues which the Commission determined to be the minimum to permit it to earn a fair return, unless it applied the retention factor. Piedmont notes that the only thing that had changed since the Commission's last Order is "the Consumer Advocate has made a thinly veiled threat to appeal this issue." Piedmont's assertions

in this regard must be denied. First of all, Piedmont omits reference to our Supreme Court's decision of May 23, 1988, in Hamm v. South Carolina Public Service Commission and Piedmont Natural Gas Company, Inc., 295 S. C. 429, 368 S.E.2d 911 (1988). In that case, the Supreme Court vacated the Order of the Circuit Court, which had upheld the Commission's holding on the retention factor, and remanded the matter to the Commission "to substantiate the record and include in its Order the basis for the adoption and approval of the use of retention factors." Following that remand, Piedmont filed a Motion, requesting that the Commission reopen the record in order to substantiate it. Piedmont's Motion was denied, and the Commission issued its Order[1] requiring Piedmont to remove the retention factor from its rates, and to refund to its customers all revenues collected, due to the use of the retention factor, from the effective date of its original orders, plus interest at the rate of 12.00% per annum. The Commission, subsequent to the issuance of the original rate order, examined the evidence which was already contained in the record, and on reconsideration, decided that there was not enough evidence to support the use of the retention factor. This position was subsequently upheld by the South Carolina Supreme Court in the case of Piedmont Natural Gas Company v. Steven W. Hamm, Consumer Advocate for the State of South Carolina and the South Carolina Public Service Commission, 301 S.C. 50, 389 S.E.2d 655 (1990) and the Commission went on to

1. Order No. 88-1121, dated October 26, 1988, Docket No. 86-217-G.

issue Order No. 90-302, dated March 16, 1990, which ordered the Company to reduce its rates and to issue refunds with interest in the form of a customer bill credit during the Company's April 1990 billing cycle. Therefore, much was different when the Company presented the concept of the retention factor to the Commission in this case from the first time the concept was presented to the Commission in 1986. Our Order No. 91-1003 examined the matter in detail and found that the retention factor was inconsistent with proper ratemaking standards, and that the sales levels and numbers of customers which existed during the test year were the appropriate surrogate for future conditions instead. (See Order No. 91-1003 at 9.) The Commission went on to state that the retention factor was not consistent with good ratemaking principles. Id at 10. Therefore, the Company's assertion as to the retention factor in its Petition for Reconsideration must be rejected.

The Company also alleged that the Commission erred in ordering the Company "to complete within the next six months a study that is currently being done for North and South Carolina operations to determine the level of excess accumulated deferred income taxes retained by the Company." (See Order at 54.) The Company pointed out at page two of its Petition that the study was currently being done to comply with the ruling of the North Carolina Utilities Commission, and that such a study was to be completed within two years, or by the time of the Company's next general rate case, whichever is later. Piedmont also stated that the study could not

be completed within six months. The Commission agrees with the reasoning of the Company, and hereby holds that the study on the level of excess accumulated deferred income taxes may indeed be completed within two years or by the time of the Company's next general rate case, whichever is later, so as to be consistent with the ruling of the North Carolina Utilities Commission.

Both Piedmont and the Consumer Advocate objected to the Commission's holding on rate of return on common equity. (See Piedmont's Petition for Reconsideration at 1 and 2; See Consumer Advocate's Petition for Rehearing and Reconsideration at 6 and 7). Piedmont stated that the Commission's rate of return was too low. The Consumer Advocate stated that the Commission's rate of return was too high.

With regard to the assertions of Piedmont Natural Gas Company, Piedmont stated that the 12.00% return on common equity is less than the Commission granted to South Carolina Electric & Gas Company and Duke Power Company and that both of these companies are larger and less risky than Piedmont Natural Gas Company. It should be noted that this Commission considers the rate of return on equity in each case on its own merits. Each company is unique and the return on equity allowed for each company will reflect individual differences. The return on equity allowed for a particular company will, at most, provide a reference for the return allowed for a similar company. If one were to assume that Piedmont Natural Gas Company, Duke Power Company and South Carolina Electric & Gas Company were comparable or similar companies, their

allowed rate of return on equity could provide a reference for each other. The facts are that their allowed rates of return on equity are similar, although not identical. Each Company has an allowed return somewhere in the range of 12.00% to 12.50%. Therefore, the Company's belief that the Commission's stated rate of return for it is too low is inexplicable.

Piedmont also states that the South Carolina Commission's holding on rate of return was lower than the rate allowed in North Carolina or Tennessee in recent orders. This Commission does not consider all matters in a case in a manner identical to the North Carolina or the Tennessee Commissions. Also, the Commissions' decisions occur at different times, and, therefore, are based on data and economic conditions which are not identical. The decisions of other jurisdictions can have relevance only when each jurisdiction considers identical matters in an identical manner, and in an identical time period, using identical data. Such is not the case in this proceeding. Thus, the assertions of Piedmont must fail.

The Consumer Advocate stated that it believed that the Commission's allowed return is at the high end of the range determined by Staff witness Spearman and was, therefore, inappropriate in the case at bar. The cost of equity analyses prepared by Staff witness Spearman produced a wide range of expected values. Given certain assumptions, the analyses resulted in minimum expected value of 9.2%, while other assumptions resulted in a maximum value of 12.6%. It is the responsibility of this

Commission to determine from the evidence presented which cost of equity estimates are most representative of the expectations of long-term investors. The allowed return on equity of 12.00%-12.25% is within the ranges derived from the analyses of both Staff witness Spearman and Company witness Murry. Also, the averaging of all estimates does not provide a better foundation for determining the cost of equity than the judgment of the witnesses. Such a mechanical procedure prohibits the witnesses, and thus the Commissioners, from using their expertise to recommend a return on equity, which they determine to best reflect the rate required to attract equity investors. The Commission, therefore, rejects the assertions of the Consumer Advocate and reaffirms the rate of return allowed the Company in Order No. 91-1003.

The Consumer Advocate, in his Petition for Rehearing and Reconsideration, states that the Commission erred in approving a capital structure of 43.68% long-term debt and 56.32% common equity for Piedmont. (See Consumer Advocate Petition at 7). First, the Consumer Advocate states that the capital structure as of July 31, 1991, which was adopted by the Commission is not representative, due to recent issuance of common stock. The Commission policy is to adopt a "known and measurable" rule, unless this results in significant distortion. The capital structure at July 31, 1991 (43.68% long-term debt, 56.32% equity) was the latest that could be verified by the Commission Staff. Furthermore, the capital structures reported by Piedmont in response to the Commission Staff's Data Request No. 1-1 include current maturities and sinking

fund requirements in its long-term debt component.[2] Removing the current maturities and sinking fund requirements from long-term debt, standard accounting and Commission practice reduces the percentage of long-term debt and increases the percentage of equity in Piedmont's capital structure. Based on data from its 1990 Annual Report, Piedmont's capital structure for fiscal year ending October 31, 1990, was 45.12% long-term debt and 54.88% common equity. When current maturities and sinking fund requirements were excluded from long-term debt for the five fiscal years from 1986 to 1990, Piedmont's long-term debt ranged from a low of 41.14% to a high of 49.42%, while its common equity ranged from 50.76% to 58.86%.[3] After removing current maturities and sinking fund requirements from long-term debt, the average capital structure over this five-year period was 45.55% long-term debt and 54.45% common equity. Thus, it is common for the capital structure to vary significantly from year to year and throughout a year. On October 31, 1990, Piedmont's capital structure including current maturities and sinking fund requirements consisted of 46.96% long-term debt and 53.04% common equity compared to 48.16% long-term debt and 51.84% common equity on December 31, 1990. Therefore, Piedmont's known and measurable capital structure as of July 31, 1991, is not unreasonable, considering the variability of capital structure over time and excluding current maturities and

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2,3. The Commission takes judicial notice of both the answer to Staff Data Request 1-1 in this Docket and Piedmont's 1987-1990 Annual Reports on file with this Commission.

sinking fund requirements from long-term debt.

The Consumer Advocate also stated that it believed that the capital structure adopted by the Commission was not representative because Piedmont's equity investment in its subsidiary companies was included. (See Consumer Advocate Petition at 11). Equity capital used to finance non-utility operations and subsidiaries should not be included in the capital structure of the regulated operations. However, removing approximately $16,000,000 which Piedmont reports as "investments in subsidiary companies" from its common equity assumes that Piedmont finances its investments in non-utility subsidiaries solely through retained earnings or the issuance of Piedmont common stock. Piedmont may also finance its equity investment in non-utility subsidiaries by issuing debt and/or preferred stock. More information about the actual source of financing for its equity investments in non-utility subsidiaries must be known before a proper adjustment can be made to Piedmont's capital structure relating to its regulated operations. Lacking this financing information, no adjustment was made by the Commission Staff.

The Consumer Advocate takes issue with the Commission allowing the Company to charge Account No. 917 (Advertising) to its ratepayers and also takes issue with allowing the Company to charge certain American Gas Association (AGA) dues to its ratepayers. (See Consumer Advocate Petition at 2-3). The Commission has reexamined the appropriate sections of Order No. 91-1003 and would reaffirm the holdings, as stated therein, appropriate support under

S.C. Code Ann. §1-23-350.

The Consumer Advocate also contends that the Commission erred by stating that the Consumer Advocate contended that the Commission should not make any adjustments to the plant-in-service at the end of the test year. The Consumer Advocate goes on to state that it is clear from the Consumer Advocate's proposed findings that because of the agreement to use a customer growth factor through July 31, 1991, that the Consumer Advocate stipulated to the use of the adjusted plant-in-service. (See Consumer Advocate's Proposed Findings at 52). The Commission has reexamined the Consumer Advocate's Proposed Findings and agrees that the Consumer Advocate did stipulate to the use of the adjusted plant-in-service and, therefore, holds accordingly.

The Consumer Advocate states that in Order No. 91-1003, the Commission erred in allowing the Company to charge a long-term incentive plan to its ratepayers by not setting forth sufficient findings of fact and substantial evidence to support its conclusions with regard to this issue. The Consumer Advocate went on to allege that the Commission Staff and the Consumer Advocate had tried unsuccessfully to obtain data concerning the long-term incentive plan during their investigation of the case, and that it was only in the twilight moments of the hearing that the Company offered support for the long-term incentive plan. The Consumer Advocate then stated that beyond the difficulty with investigation, that there was no showing that the long-term incentive plan itself contributed to the benefits enumerated by the Commission in Order

No. 91-1003.

The Commission has reconsidered its holding on the long-term incentive plan and has decided that it improvidently granted the Company's $140,060 adjustment. As the Consumer Advocate pointed out, data on the plan was not presented until the twilight moments of the hearing. Both Staff witness Cherry and Consumer Advocate witness Miller testified that the data was provided too late for them to conduct any meaningful analysis. (Tr., Vol. 3, Miller at 122; Tr., Vol. 4, Cherry at 177-178, 198). The Commission agrees with this statement and therefore believes that, indeed, there was not enough time for either the Commission Staff or the Consumer Advocate to investigate the data and connect it with the benefits alleged by the Company in the testimony of John Maxheim (Tr., Vol. 5, Maxheim at 122). Therefore, the Commission believes that it cannot rightfully tie the benefits cited by Mr. Maxheim to the long-term incentive plan. (See alleged benefits listed on pages 19 and 20 of Order No. 91-1003.) Therefore, the Commission reverses its position as stated in Order No. 91-1003 and adopts the Staff adjustment of a decrease in expenses of $406,678. (The Consumer Advocate had proposed a decrease in expenses in the amount of $406,681. See Proposed Findings of the Consumer Advocate at 50.)

IT IS THEREFORE ORDERED:

1. That the Commission denies in part and grants in part reconsideration as requested by both parties as explained above.

2. That the Consumer Advocate's Petition for Rehearing is denied.

3. That the Company shall develop and place into effect within ten (10) days of the date of this Order rates consistent with the Commission's reduction of expenses attributable to the long-term incentive plan, and shall file tariffs with this Commission accordingly within ten (10) days of the date of this Order.

4. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Marjorie Amos-Frazier
Chairman

ATTEST:

Charles W. Austin
Executive Director

(SEAL)